



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

November 21, 2023

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Daniel Alvarez**
Tax Registry No. 964372
78 Precinct
Disciplinary Case No. 2022-25361

Police Officer Andrey Samusev
Tax Registry No. 958047
78 Precinct
Disciplinary Case No. 2022-25362

The above named members of the service appeared before Deputy Commissioner of Trials Rosemarie Maldonado on December 14, 2022, charged with the following:

DISCIPLINARY CASE NO. 2022-25361

1. Police Officer Daniel Alvarez, on or about May 30, 2020, at approximately 2000, while assigned to the 78 PCT and on duty, in the vicinity of 271 Flatbush Avenue, Kings County, wrongfully used force in that he struck individuals with a vehicle without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

DISCIPLINARY CASE NO. 2022-25362

1. Police Officer Andrey Samusev, on or about May 30, 2020, at approximately 2000, while assigned to the 78 PCT and on duty, in the vicinity of 271 Flatbush Avenue, Kings County, wrongfully used force, in that he struck **Person A** with a vehicle without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

2. Police Officer Andrey Samusev, on or about May 30, 2020, at approximately 2000, while assigned to the 78 PCT and on duty, in the vicinity of 271 Flatbush Avenue, Kings County, wrongfully used force, in that he struck **Person B** with a vehicle without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

3. Police Officer Andrey Samusev, on or about May 30, 2020, at approximately 2000, while assigned to the 78 PCT and on duty, in the vicinity of 271 Flatbush Avenue, Kings County, wrongfully used force, in that he struck **Person C** with a vehicle without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

4. Police Officer Andrey Samusev, on or about May 30, 2020, at approximately 2000, while assigned to the 78 PCT and on duty, in the vicinity of 271 Flatbush Avenue, Kings County, wrongfully used force, in that he struck individuals with a vehicle without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

In a Memorandum dated February 17, 2023, the Deputy Commissioner of Trials Rosemarie Maldonado found Police Officer Daniel Alvarez guilty of the sole Specification in Disciplinary Case No. 2022-25361 and Police Officer Andrey Samusev was found not guilty of all Specifications in Disciplinary Case No. 2022-25362.

I have reviewed and considered the entire record in this matter, and approve of Deputy Commissioner Maldonado's findings and recommended penalty for Police Officer Samusev, however, I disapprove of the findings and recommended penalty for Police Officer Alvarez.

On May 30, 2020, Police Officer Alvarez found himself in a chaotic, volatile, and extremely dangerous situation. Police Officer Alvarez responded to a request from Police Officer Samusev for immediate assistance at the intersection of Flatbush Avenue and Saint Marks Avenue. Police Officer Samusev had been attempting to respond to other officers' emergency transmissions requesting assistance. Police Officer Samusev, with his lights and sirens activated, attempted to drive to the location, and within minutes he observed a large crowd acting disorderly, screaming, yelling, and throwing objects. Police Officer Samusev was canvassing for the unit in distress when something flew through his driver side window, shattering it. Police Officer Samusev testified he was covered in glass and suffered cuts, but continued to drive looking for the police officers that requested backup. Police Officer Samusev further testified as he approached Saint Marks Avenue, he was ambushed when a group of people rammed a barrier into his car, surrounded him, and prevented his vehicle from moving forward. A large group of protestors had blocked Police Officer Samusev's vehicle from proceeding forward by holding a metal barrier against the vehicle. Police Officer Samusev stated multiple items were thrown at his vehicle and he was surrounded by the sound of smashing glass. Police Officer Samusev

testified that “he was never so scared in his life.” Police Officer Samusev proceeded to request emergency assistance via radio transmissions.

While en route to Police Officer Samusev’s call for assistance, Police Officer Alvarez testified a man with a baseball bat broke the front headlight of his vehicle. Additionally, Police Officer Alvarez testified hearing one of his vehicle windows shattering, but was not sure at the time which window it was, due to the chaos he encountered. Upon inspection, he later confirmed his rear window had been shattered. Upon arrival to Police Officer Samusev’s location, Police Officer Alvarez recognized the danger presented and attempted to leave the location. Furthermore, Police Officer Alvarez testified that he believed he could have been killed, as he was outnumbered, surrounded, and unknown objects were being thrown at his vehicle. Police Officer Alvarez slowly and deliberately maneuvered his vehicle to the right, away from where the protestors were at their greatest number, with his emergency lights and sirens activated to alert everyone that he was attempting to leave. A few individuals began to reposition themselves in front of his vehicle, in an attempt to block it from leaving. As stated in sum and substance by the Deputy Commissioner Maldonado, we cannot ignore Police Officer Alvarez’s perception of urgency and the risk presented to himself and his partner. This was a rapidly evolving situation involving a crowd exhibiting hostility and violence toward the police.

In sum and substance, the Deputy Commissioner Maldonado stated after Police Officer Alvarez intentionally drove into the crowd and pushed individuals with his RMP, the scene escalated from an uncertain standoff to a dangerous physical confrontation. I disagree, as I believe the officers were already at a dangerous physical confrontation created by these individuals who were hurling various objects, blocking police vehicles, and preventing them from responding to police officers calling for help. Based on the video evidence, I determined it was reasonable for Police Officer Alvarez to leave the location for his safety. What was not reasonable, were the actions of the protestors, who created this extremely hazardous encounter. These were not peaceful protestors. These individuals were blocking emergency vehicles from performing their job and actively attempting to damage their vehicles and/or injure police officers. Police Officer Alvarez was attempting to provide assistance to other officers who were calling for emergency assistance, who were also in fear for their lives. The actions of these protestors were troubling for public safety, as they showed no care that they were putting others at risk by blocking emergency vehicles, hurling items, and damaging police vehicles.

This encounter involved the dangers police officers face daily, and the decisions they must make in a split second. It should be noted, no evidence was presented to establish a single injury to any of the civilians. Deputy Commissioner Maldonado stated, in sum and substance, that she recognized this would have been a challenging situation for even the most seasoned officer to handle and I agree.


To impose discipline would not be in the interest of justice, considering the danger presented during this encounter, and what these officers knew was occurring throughout

POLICE OFFICER DANIEL ALVAREZ
POLICE OFFICER ANDREY SAMUSEV

DISCIPLINARY CASE NO. 2022-25361
DISCIPLINARY CASE NO. 2022-25362

the city, at that time. The night prior, a woman was charged with the attempted murder of NYPD officers, after throwing a Molotov cocktail at a marked, occupied police van in Brooklyn. This was fresh in the minds of all police officers, across the five boroughs. Officers were on heightened alert, aware of the dangers and volatile nature of some of the protests. In sum and substance, Deputy Commissioner Maldonado stated that Police Officer Alvarez confronted a crowd of protestors that aimed their hostility directly at the police, which is a significant mitigating factor in this case

Thus, I have determined that Police Officer Daniel Alvarez and Police Officer Andrey Samusev be found not guilty and impose no disciplinary action.


11/21/23
Edward A. Caban
Police Commissioner



POLICE DEPARTMENT

February 17, 2023

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In the Matter of the Charges and Specifications	:	
- against -	:	
	:	
Police Officer Daniel Alvarez	:	Case No. 2022-25361
Tax Registry No. 964372	:	
78 Precinct	:	
	:	
Police Officer Andrey Samusev	:	Case No. 2022-25362
Tax Registry No. 958047	:	
78 Precinct	:	

-----X

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Rosemarie Maldonado
Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Brian Arthur, Esq. & Nishat Tabassum, Esqs.
Civilian Complainant Review Board
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To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2022-25361

1. Police Officer Daniel Alvarez, on or about May 30, 2020, at approximately 2000 hours, while assigned to the 78 Precinct and on duty, in the vicinity of 271 Flatbush Avenue, Kings County, wrongfully used force in that he struck individuals with a vehicle without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

Disciplinary Case No. 2022-25362

1. Police Officer Andrey Samusev, on or about May 30, 2020, at approximately 2000 hours, while assigned to the 78 Precinct and on duty, in the vicinity of 271 Flatbush Avenue, Kings County, wrongfully used force in that he struck **Person A** with a vehicle without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

2. Police Officer Andrey Samusev, on or about May 30, 2020, at approximately 2000 hours, while assigned to the 78 Precinct and on duty, in the vicinity of 271 Flatbush Avenue, Kings County, wrongfully used force in that he struck **Person B** with a vehicle without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

3. Police Officer Andrey Samusev, on or about May 30, 2020, at approximately 2000 hours, while assigned to the 78 Precinct and on duty, in the vicinity of 271 Flatbush Avenue, Kings County, wrongfully used force in that he struck **Person C** with a vehicle without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

4. Police Officer Andrey Samusev, on or about May 30, 2020, at approximately 2000 hours, while assigned to the 78 Precinct and on duty, in the vicinity of 271 Flatbush Avenue, Kings County, wrongfully used force in that he struck individuals with a vehicle without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on December 14, 2022. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. The CCRB entered video recordings of the incident and the hearsay statement of **Person A**. Respondents each testified on their own behalves. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, the tribunal finds Respondent Samusev not guilty, and finds Respondent Alvarez guilty and recommends that he forfeit 40 vacation days and be placed on one-year dismissal probation.

ANALYSIS

a. Background:

On May 30, 2020, large crowds took to the streets of New York City to protest the murder of George Floyd at the hands of a Minneapolis police officer. On that day, Respondents Samusev and Alvarez were assigned to the 78 Precinct and worked the 1600 hour to midnight tour. (Tr. 38-39, 103-05) Respondent Samusev was the operator of marked RMP 3555; Respondent Alvarez was the operator of marked RMP 4403. (Tr. 42, 105) During their tour, each Respondent, and their respective partners, responded to a number of radio calls related to massive demonstrations and civil unrest in and around Grand Army Plaza. All members of service throughout the City were alerted that criminal activity -- such as firebombings, looting, and violence toward the police -- was also taking place.

At approximately 2000 hours, each Respondent arrived separately at the intersection of Flatbush Avenue and Saint Marks Avenue. It is undisputed that: a group of protestors at the intersection "were clearly breaking the law by impeding traffic;" the crowd intentionally stopped

Respondent Samusev's RMP from driving by holding a large metal barrier against the vehicle; and that Respondents "were faced with an extremely difficult and dangerous situation. . . . not of their own making." (Tr. 161, 171) In dispute is whether Respondents engaged in misconduct when they drove their RMPs into this hostile crowd. For the reasons set forth below, I find Respondent Alvarez guilty and Respondent Samusev not guilty of the charged misconduct.

b. Summary of Evidence Presented by CCRB:

CCRB presented no witnesses to testify at trial. Instead, the administrative prosecutors relied primarily on brief videos which documented the incident. The following is a summary of the 25-second clip entered into evidence as CCRB Exhibit 1. The footage provides an overhead perspective of the scene.

- 00:00-00:01: RMP 3555 is stopped in the middle of Flatbush Avenue, approximately three feet from a dozen protestors who are illegally blocking the street with a large metal barrier. Over 100 other people are also in the area. The RMP lights are activated; the siren is on only briefly.
- 00:01-00:02: The protestors behind the metal barrier pick it up, move it approximately three feet and hold it flush against the front bumper of RMP 3555. As they do so, additional protestors move toward the vehicle.
- 00:02-00:13: As protestors congregate and physically hold the barrier against RMP 3555, the crowd begins to throw objects at it, including a trash bag, orange traffic cones, water bottles and other indistinguishable items. The RMP's front windshield appears damaged.¹
- 00:07-00:14: Individual protestors approach the side and rear of RMP 3555. One person (dressed in a black sweatshirt and pants) runs toward it, stops directly in front of the driver-side window and leans in before running away. Items continue to be thrown at the RMP from all directions.
- 00:13-00:14: RMP 4403 drives up behind RMP 3555 with lights and sirens activated. It then veers to the right where fewer people are standing in the street.

¹ In a phone interview with a CCRB investigator, **Person A** stated that when objects were being thrown at the police vehicle, he noticed that the windshield of the SUV looked like it may have been cracked, but he did not see what caused it. (CCRB Ex. 4A at 34-35)

- 00:14-00:18: A few individuals move away from RMP 4403 as it approaches. Others step toward it. A person with light hair (carrying a black bag) maintains her position in front of RMP 4403, films the vehicle and steps backwards as the RMP advances toward her.
- 00:18-00:21: An individual with tattooed legs (dressed in a black cap, shirt and shorts) runs close to RMP 3555 as RMP 4403 moves forward.
- 00:18-00:23: The crowd continues to surround RMP 4403 as it proceeds. Multiple individuals bang hard on its hood and sides as it pushes approximately ten individuals with its front bumper. Some individuals hold onto the hood as RMP 4403 continues its forward trajectory.
- 00:21-00:22: The individual with tattooed legs runs up to the driver-side door of RMP 3555; their arm extends forward filming with a phone. As RMP 4403 continues to drive through the crowd, RMP 3555 lurches forward (approximately three-quarters of a car length) into the metal barrier and those holding it. A number of people are thrown to the ground. The impact bends the metal barrier.
- 00:22-00:23: RMP 3555 immediately stops as RMP 4403 continues to drive and push those pedestrians that remain in front and to its side.
- 00:23-00:25: A person in a red sweatshirt jumps on the hood of RMP 3555. RMP 4403 drives out of the video frame as protestors continue to be pushed by the vehicle.

CCRB Exhibit 2 captured RMP 3555 stopped in the middle of Flatbush Avenue. The most relevant segment of this recording is 22 seconds in length; the perspective is street level.

- 00:00-00:05: A large crowd holds a metal barrier against the front of RMP 3555, blocking its path. Numerous objects are thrown at the RMP as it is prevented from moving. The RMP lights are activated. The rear brake light is off. The driver-side window is broken.
- 00:05-00:10: A protestor in a black sweatshirt and pants runs up to the front driver-side door, stops, leans forward and runs away.
- 00:10-00:11: The rear brake light of RMP 3555 is on. Sirens are heard in the distance. A blonde individual with leg tattoos (wearing a black cap, shirt and shorts) walks into the frame and records on a cell phone.
- 00:12-00:14: RMP 4403 drives up behind, and then to the right, of RMP 3555. RMP 4403 has its lights and sirens on as it moves forward. The rear brake light

of RMP 3555 is off. The individual with tattooed legs runs up to the driver-side door of RMP 3555, arm extended with a cellphone in hand.

00:15-00:17: RMP 3555's brake lights are on briefly and then turn off.

00:18-00:19: RMP 3555 lurches forward into the crowd.

00:19-00:20: RMP 3555 stops; the rear brake light is on.

00:21-00:23: A person in a red sweatshirt jumps onto the hood of RMP 3555.

00:23-00:27: The recording cuts to the sidewalk.

The video introduced into evidence as CCRB Exhibit 3 recorded the scene after RMP 3335 and RMP 4403 drove through the crowd. Below is a summary of the relevant sections:

00:00-00:18: The recorder is walking on Flatbush Avenue approaching the trunk of RMP 3555 which is stopped in the middle of the street. A large crowd gathers as sirens blare in the background. There is a loud sound of something hard hitting glass. The crowd surrounds the RMP and throws objects at it. An individual is hitting the rear of the RMP with an orange traffic cone.

00:19-00:39: The front doors of RMP 3555 open and the officers exit. There's a loud car horn beeping and the recorder yells, "Babe, sidewalk now!" and "Keep moving, stay off the road!" There are various protestors walking from the street onto the sidewalk.

00:40-00:56: The video then focuses on the scene in front of RMP 3555. The metal barrier lies bent on the street. No one is on the ground in front of the RMP and no one is captured who seems to need, or is receiving, medical assistance.

The CCRB interview of Person A was also admitted. In this out-of-court, telephone interview, Person A told CCRB that he had observed a crowd set up a metal barrier in the middle of Flatbush Avenue that blocked traffic and prevented an RMP from passing by. (CCRB Ex. 4A at 8) Person A also observed protestors throwing objects at the stopped police vehicle. When a second RMP approached, he walked in its direction to "see what was going on." Suddenly, the

first RMP “accelerated” into the metal barrier and the crowd. (CCRB Ex. 4A at 9-10) Person A claimed that the first vehicle pushed him and injured his ribs. (CCRB Ex. 4A at 10, 51)

The Police Accident Report provides the following information in the section designated as “Accident Description/Officer’s Notes:”

At TPO Vehicle #1 RMP 3555 with emergency lights and sounds activated was intentionally blocked by unruly protestors with barricade. Protestors were throwing projectiles that shattered front windshield causing operator to lose sight of roadway. Vehicle #1 RMP 3555 did accelerate forward coming into contact with pedestrians. No injuries were reported by pedestrians. Occupants of Vehicle #1 RMP 3555 were removed to hospital with projectile and glass injuries. Vehicle #2 RMP 4403 tried to avoid same condition that Vehicle #1 had encountered and attempted to proceed forward with emergency lights and sound activated striking unknown pedestrians. No injuries were reported by pedestrians. Vehicles were intentionally attacked by same pedestrians involved. (CCRB Ex. 6 at 1-3)

The Preliminary Statement of the Investigating Supervisor concluded that both Respondents’ actions were proper under the circumstances. (CCRB Ex. 6 at 7-8) The Internal Affairs Bureau also determined that Respondents acted within Department regulations. (Tr. 54, 115, 159)

c. Summary of Respondent Samusev’s Testimony:

Respondent Samusev appeared at trial to explain his version of events. Specifically, Respondent Samusev stated that he and his partner, Officer Grant, heard members of their squad calling for backup after being surrounded by protestors near the intersection of Flatbush Avenue and Prospect Place. (Tr. 40-41) Respondent Samusev activated the RMP lights and sirens and immediately drove northbound on Flatbush Avenue. Within minutes, he observed “a couple of hundred people acting disorderly, screaming, yelling, [and] throwing objects.” (Tr. 43) He was canvassing the area for the unit in distress when “something flew through the [driver’s side] window” and shattered it. (*Id.*) Respondent Samusev testified that he was covered in glass and

suffered “a couple of cuts,” but continued to drive looking for the unit that had requested backup. (Tr. 44)

According to Respondent Samusev, as RMP 3555 approached Saint Marks Avenue, they were “ambushed” when a “couple dozen people ram[med] [a barrier] into [his] car” and “surrounded” them. (Tr. 44-45) Respondent Samusev believed this to be an “organized attack” because, after being forcibly stopped, “a lot of air mail” was thrown at RMP 3555 and they were encircled by the sound of “smashing glass.” (Tr. 45) Respondent Samusev claimed that he was “never so scared in [his] life,” but he kept his foot on the brake to prevent the car from moving and injuring pedestrians. (Tr. 47, 51-52, 66-67, 71, 100)

At trial, Respondent Samusev asserted that while stopped he suddenly heard a “loud bang,” perhaps a window breaking, and “something hit” the RMP. (Tr. 48, 81) In reaction, he claimed to have “flinched” and “tried to cover his head.” (Tr. 48-49) According to Respondent Samusev, this physical response to the “loud bang” caused his “foot to come off the brake” and the RMP to lurch forward into the crowd. He immediately “slammed the brakes” after his vehicle moved. It was only then that he first put the RMP transmission into “park.” (Tr. 48-49, 56, 86-88)

When Respondent Samusev stopped, the crowd attacked RMP 3555. A protestor jumped on the hood, broke the windshield with a “metal sign,” and continued to kick it in while Respondent Samusev and his partner were still inside. (Tr. 49) Respondent Samusev recounted feeling “devastated,” “like a sitting duck,” and thought it would be best to “take [his] chances” outside because he did not want “anybody to get hurt” by moving the vehicle any further. (Tr. 50-52) As he exited the RMP, hard objects were thrown at his head and back, including an orange traffic cone. He then reached into the RMP to retrieve his helmet, shield, and asp and

“face the protestors.” (Tr. 51-52; Resp. Ex. B) Respondent Samusev testified that “some civilians” approached, advised him not to engage with the crowd and led him to a safer position on the sidewalk. (Tr. 52-53)

Respondent Samusev was taken to the hospital where he received treatment for his injuries and was administered a tetanus shot. RMP 3555 sustained a cracked windshield, a broken rear window, a broken driver’s side window and a damaged side-view mirror. The interior of the RMP was covered with broken glass and a large rock was found on the driver-side floor. (Resp. Ex. D; Tr. 53-54, 62-65)

On cross-examination, CCRB asked Respondent Samusev why he had not tried to back away from the crowd. He explained that his focus was on “trying to look forward and on [his] left side mostly,” and that visibility through the rear windows was poor. (Tr. 76, 78) Respondent conceded that the video did not capture damage to the passenger-side windows or the rear windows. He also affirmed that immediately preceding the RMP’s sudden movement, no person or item was captured hitting it. He insisted, however, that “there was a lot of air mail, a lot of objects hitting the car, and you [could] hear [the] breaking [of] windows.” (Tr. 81, 84, 86)

CCRB challenged Respondent Samusev’s testimony that his foot was consistently on the brake of RMP 3555 as it was blocked. Respondent was insistent that he did not put the RMP’s transmission into “park” until after it had lurched forward. CCRB Exhibit 2 depicts Respondent’s brake light activated and then turned off at two distinct times while the RMP was immobile on Flatbush Avenue. (CCRB Ex. 2 at 00:10, 00:16) When shown the relevant 9 seconds of the video, Respondent Samusev agreed that the RMP brake light was not consistently on. He reiterated, however, that he did not put the RMP transmission into “park” and that his

foot on the brake, as well as the metal barrier held against the RMP by dozens of protestors, prevented it from moving. (Tr. 48-49, 82, 86-91)

The Collision Report for RMP 3555 includes the following statement: “Operator states that he was responding to a 10-13 when ambushed by unruly protestors that erected a barricade and hurled projectiles at RMP causing injuries. I tried to proceed forward with lights and sirens for the safety of my partner and I.” The Report includes the following witness statement by P.O. Grant: “Recorder states they were responding to a 10-13 when ambushed by unruly protestors blocking roadway. A projectile shattered windshield and another one shattered passenger window missing him and hitting operator. Operator proceeded forward to exit danger.” The Patrol Sergeant filled out and signed this report. (CCRB Ex. 6 at 8)

d. Summary of Respondent Alvarez’s Testimony:

Respondent Alvarez also testified at trial. He explained to this tribunal that he drove RMP 4403 to Flatbush Avenue and Saint Marks Avenue after Respondent Samusev’s RMP requested urgent backup. (Tr. 105) As he drove down Flatbush Avenue, Respondent Alvarez recalled seeing a “chaotic” scene with “hundreds of people all over the place.” (Tr. 108) He testified that about half a block from Respondent Samusev’s location, a man with a baseball bat “took out the front headlight” of his RMP. He described the scene as “pretty scary.” (Tr. 109, 145-46)

Respondent Alvarez confirmed that he drove up behind Respondent Samusev’s vehicle with his lights and sirens activated and then proceeded to its right. He observed RMP 3555 “under attack” and, after the incident with the bat, felt that he and his partner had to “get out of there.” (Tr. 111) Respondent Alvarez stated that although “there were people everywhere,” he observed a “small gap, a small space” in the crowd “where there’s the least amount of people”

and decided to drive away in that direction. (Tr. 111, 125) According to his testimony, his “foot was on the brake for the entirety, just kind of – you know, inching forward. Like my foot came off a little and back on, you know, on and off.” He added that with police lights and sirens activated, “People got the point. I’m moving forward, you know. You better get out of the way.” (Tr. 114) When asked whether his vehicle struck individuals, he responded “I ... would say the individuals came in contact with my car.” (Tr. 118)

Respondent Alvarez recalled hearing one of the rear RMP windows shatter, but was not sure on what side because he was “hearing things from all over . . . like banging on the car, people screaming. It was pretty loud.” (Tr. 112) He believed that they “could really get killed here” as they were outnumbered and the crowd was throwing unknown objects at the RMPs. (Tr. 113). Upon inspection, he later observed that RMP 4403’s front headlight was damaged and a rear window had been shattered. (Tr. 115-17; Resp. Exs. E, F)

On cross-examination, Respondent Alvarez conceded that the video did not capture an empty space on the street wide enough for his vehicle to drive through. (Tr. 122, 125) Although he acknowledged that his RMP made “contact” with a number of protestors, he insisted that they should have moved because “[he] had his lights and sirens on [and] it’s a police vehicle ... you shouldn’t go in front of a police vehicle with their lights and sirens on.” (Tr. 124, 131-32) When CCRB asked why he had not backed away from the area, Respondent Alvarez replied that the man who hit the RMP with a bat could still be there and that too many people were on the street to maneuver safely in reverse. (Tr. 133)

The Collision Report for Respondent Alvarez’s RMP includes the following operator statement: “Operator states that he was responding to a 10-13 when ambushed by unruly protestors and that he tried to evade projectiles after his side rear window was shattered.” The

Report includes the following witness statement made by P.O. Baksh, the recorder: “Recorder states they were responding to a 10-13 when ambushed by unruly protestors blocking roadway. A projectile shattered rear driver’s side window and that he observed other RMP under attack. Operator proceeded forward to exit danger.” The Patrol Supervisor filled out and signed this Report. (CCRB Ex. 6 at 7)

e. Findings:

At issue is whether Respondents wrongfully used force by striking individuals with their vehicle. As set forth in Patrol Guide Section 221-01, force may be used by a uniformed member of service when it is “reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life....” The test of reasonableness requires careful attention to the facts and circumstances of each particular case and must allow for a police officer’s frequent need to make “split-second” judgments about how much force is necessary “in circumstances that are tense, uncertain, and rapidly evolving.” *Graham v. Connor*, 490 U.S. 386 (1989), citing *Terry v. Ohio*, 392 U.S. 1 (1968).

▪ ***Respondent Alvarez***

There is no dispute that, upon approaching Flatbush and Saint Marks Avenues in response to RMP 3555’s urgent request for assistance, Respondent Alvarez confronted a difficult and uncertain situation. A crowd had unlawfully blocked RMP 3555 with a metal barrier while others took advantage and pelted the RMP with objects. As he recounted at trial, Respondent Alvarez immediately made the decision not to remain at that location. He veered RMP 4403 to the right side of the street - where fewer people were standing - and drove through. Respondent Alvarez did not stop when pedestrians moved toward the vehicle, failed to move out of the way, or even when they were eventually being pushed by his RMP. For the reasons set forth below,

this tribunal finds that Respondent Alvarez's actions rose to the level of sanctionable misconduct.

As the driver of an RMP, Respondent Alvarez was required to exercise a duty of care that did not create an unreasonable risk of harm to those on the street. He breached that duty, not by merely miscalculating the clearance while attempting to pass, but by willingly disregarding the serious risk he posed to others by intentionally driving into pedestrians and failing to stop even when he pushed them for yards with the RMP. Respondent Alvarez's testimony was clear on this point. He explained to this tribunal that because RMP 4403 proceeded with police lights and sirens, "People got the point. I'm moving forward, you know. You better get out of the way." He underscored this perspective by adding that, "...it's a police vehicle ... you shouldn't go in front of a police vehicle with their lights and sirens on." (Tr. 124, 130) The following exchange during cross-examination further reveals that he consciously acted with indifference to the danger he created by deciding to collide with pedestrians:

Q. The image [video] you are looking at Officer, isn't it true, if you... continue to drive your vehicle forward in a straight line, you would hit civilians unless they got out of the way?

A. Well, I'm on the roadway. The car –

Q. I understand. My question is, if you drove in a straight line you would hit them?

A. That's obvious. If someone's there and a car is driving towards them, they didn't move, like, that person is going to get hit.

Q. You assume if you move forward they would get out of the way?

A. Maybe not in a personal vehicle. In a police vehicle, marked lights and sirens.

Q. ...We just saw the video ... a few seconds ahead ... that you moved forward in those few seconds, correct?

A. Yeah.

Q. And there were still individuals not getting out of the way?

A. Yeah.

Q. So, Officer, you[r] assumption was not correct?

A. Right.... (Tr. 128-29)

This tribunal notes that Respondent Alvarez's assertion is a truism: pedestrians in general, and these protestors in particular, have an obligation to move out of the way of a police vehicle when its lights and sirens are activated. In fact, Vehicle and Traffic Law Section 1104 affords certain privileges to drivers of such emergency vehicles. These privileges, however, do not attach when, as here, the operator unreasonably chooses to disregard significant risks to others. Patrol Guide section 217-06 cites to this particular section of the VTL and notes that disciplinary action is "more appropriate . . . for those members who are involved in vehicle collisions which occurred as a result of their unsafe disregard" of driving laws and regulations. P.G. 217-06 at p.10. Here, specifically, Respondent Alvarez knew that protestors were in his direct path but did not stop his vehicle even when his assumption that they would move did not materialize.

In sum, when Respondent Alvarez failed to stop, before and after it became obvious that he was pushing individuals with the RMP, he violated the most basic standard of care expected of drivers on the road. That the protestors were wrong to unlawfully block the RMPs is without question. That fact alone, however, does not absolve him of the responsibility to exercise due care. The *last chance doctrine* in tort law codifies this common sense principle of the road: even if a pedestrian in a tort case bears responsibility for causing an accident, the driver can still be held liable if they had a chance to avoid a collision with the pedestrian in the final moments

before the accident. That is certainly the case in this disciplinary matter. It was unquestionably within Respondent Alvarez's control to avoid using his RMP to hit and then push civilians. His failure to do so created a serious risk of injury to others that cannot be endorsed by the NYPD.

In making this finding, the tribunal did not, and cannot, ignore Respondent Alvarez's perception of urgency and risk to himself and his partner. This was a rapidly evolving situation involving a crowd exhibiting hostility toward the police. As he candidly told this tribunal:

I was trying to get out of there. My car was under attack. They were under attack. I had to get out of there. I couldn't stay there. I could've gotten killed if I stayed there.... I'm just trying to make sure I'm safe.... I'm in a police vehicle. People should be moving out of the way. (Tr. 129-30)

As noted above, the Patrol Guide permits officers to use force to protect themselves, as well as others. The authority to use force, however, is not unlimited. In all circumstances, the application of force must be both reasonable and proportional to the threat faced by the officer. Here, Respondent Alvarez chose to use an RMP as a weapon that propelled unruly protestors out of his way. Notwithstanding the tense and potentially unsafe conditions created by them throwing objects at his vehicle, Respondent Alvarez's intentional use of the RMP to purposely hit and push unarmed protestors was patently unreasonable and grossly disproportional to the threat he faced. Given the immediate, foreseeable, and potentially fatal consequences of driving a vehicle into pedestrians, Respondent Alvarez's choice to use this type of force was excessive and unjustified.²

² The Patrol Guide recognizes the particular dangers that motor vehicles pose in crowded urban areas and how encounters can become even more dangerous when they are included in the equation. For example, Patrol Guide 221-01 prohibits the discharge of firearms at moving vehicles, even when approaching a member of service, unless deadly physical force is being used against the member of the service, by means other than a moving vehicle itself. Interestingly, the recently adopted exception to this rule is a vehicle ramming attack into a crowd. Another example is P.G. 221-15, which places significant limitations on car pursuits due to the dangers they pose to pedestrians.

In fact, it was Respondent Alvarez's use of excessive force that contributed to this crowd's eventual eruption into escalated violence. This was certainly an unstable situation prior to RMP 4403's arrival at this intersection. However, after Respondent Alvarez intentionally drove into the crowd and pushed ten individuals with the RMP, the scene escalated from an uncertain standoff to a dangerous physical confrontation. It was only then that a number of participants rushed toward RMP 4403 to bang loudly and attack it from all sides. The videos demonstrate that by intentionally disregarding the risk to life with his RMP, Respondent Alvarez recklessly lit the fuse that placed all at the scene in greater danger. Accordingly, I find Respondent Alvarez guilty of the charged misconduct.

▪ ***Respondent Samusev***

A careful review of the record establishes that, although Respondent Samusev's RMP also drove into the protestors, it is more likely than not that his actions constituted an inadvertent loss of control of the vehicle. This stands in stark contrast to Respondent Alvarez who knowingly disregarded his duty of care as a driver. Accordingly, this tribunal concludes that the preponderance of the credible evidence was insufficient to prove that Respondent Samusev engaged in misconduct when RMP 3555 lurched into the crowd.

It is axiomatic that to sanction a civil service employee for misconduct, there must be some showing of fault on the employee's part, either that he acted willfully or intentionally, or carelessly or negligently. *See* Disciplinary Case No. 2012-7616 (March 28, 2017), citing, *McGinagle v. Town of Greenburgh*, 48 N.Y.2d 949, 951 (1979); *Reisig v. Kirby*, 62 Misc. 2d 632, 635 (Sup. Ct. Suffolk Co. 1968), *aff'd*, 31 A.D.2d 1008 (2d Dep't 1969). Mere mistakes or errors of judgment, lacking in willful intent, and not so unreasonable as to be considered

negligence, are not a basis for finding misconduct. *See* Disciplinary Case No. 2015-14068 (Oct. 20, 2016); *Dep't of Correction v. Massie*, OATH Index No. 651-13 (March 29, 2013).

In this case, Respondent Samusev testified that what caused the car to propel forward was akin to a startled reflexive movement. He explained that he “flinched” and tried to “protect his head” when he heard a loud bang against the RMP, which he believed to be another window being shattered. As a result of that spontaneous reaction, his foot came off the brake pedal and the vehicle lurched forward. For the reasons set forth below, I credit Respondent Samusev’s version of events and find that his actions, although imperfect, lacked the intentionality and forethought necessary to warrant a disciplinary sanction.

First, as Respondent Samusev drove down Flatbush Avenue to assist another RMP, a protestor threw a rock through the driver-side window. Not only did the window shatter, but the rock hit Respondent’s elbow; he suffered minor cuts and scratches on his arm and he was left covered in glass. Despite his injury, and the added vulnerability of sitting beside a broken car window while objects were being thrown at his RMP, he continued to move forward in search of the unit that had called for urgent backup. The videos support his testimony that the driver-side window was broken when RMP 3555 approached the barrier. Documents and photos in evidence also confirmed Respondent’s assertion that he was injured and that a large rock, which was later found on the floor next to the broken RMP window, caused the damage. (CCRB Ex. 6; Resp. Ex. D)

Second, from the start, Respondent Samusev took the necessary safety precautions to ensure the safety of those on the scene. For example, when Respondent Samusev came upon the protestors blocking Flatbush Avenue with a metal barrier, he stopped the RMP at a safe distance -- approximately three to four feet away from the protestors. As documented by the videos, it

was the protestors who picked up the barrier, pushed it against the RMP and began to throw projectiles at it. In addition, despite his admission that he was “scared” by the hostility of the crowd, the “air mail” targeting them, and the fact that his window and the windshield were damaged, he purposely kept the RMP from moving because he did not want to “hurt” anyone. (Tr. 47-49) The video confirms Respondent’s testimony that RMP 3555 remained motionless amidst a significant portion of this unlawful barrage. (CCRB Ex. 1 at 00:00-00:21; CCRB Ex. 2 at 00:00-00:18)

Third, the evidence supports Respondent Samusev’s testimony that amidst the chaotic hostility, he reacted to an unusual sound that presaged further damage to the RMP and a possible threat to his safety. At trial, Respondent Samusev seemed to have some difficulty pinpointing exactly what prompted his physical reaction, but insisted he was encircled by disturbing noises. In fact during cross-examination, he conceded that the videos did not capture items directly hitting his RMP immediately before it lurched forward. Although this seems to be the case, close examination of the video reveals that moments before RMP 3555’s sudden movement, RMP 4403 began to drive into pedestrians. The crowd’s reaction was immediate and loud. The noise level became almost a roar; dozens ran toward RMP 4403; one person ran right up to Respondent Samusev’s broken window; and, at least half a dozen protestors banged loudly and hit RMP 4403. Respondent Alvarez confirmed this sudden escalation: “I’m hearing the window break. I’m hearing like banging on the car, people screaming. It was pretty loud . . . smashing glass . . . all around the car. Again, banging, breaking the glass....” At the time, Respondent Alvarez assumed that his own rear window was being broken.³ (Tr. 112) It was only after this crescendo of commotion and sound that RMP 3555 suddenly jumped forward. (CCRB Ex. 1 at

³ Respondent’s Exhibit F confirms that the back rear window on the driver’s side on RMP 4403 was smashed.

00:18- 00:23) In short, the crowd's reaction to RMP 4403 hitting unarmed pedestrians, and the timing of RMP 3555's acceleration, add credence to Respondent Samusev's explanation.

Fourth, Respondent Samusev's account that he had a physical reaction to the escalation was credible. It is important to underscore that Respondent Samusev was in a particularly vulnerable position. As noted above, the window he was sitting by, and which added a layer of protection from the hostile crowd, had already been shattered. Immediately prior to the vehicle's sudden movement, a protestor ran right up to that broken window. In addition, his windshield was cracked and he had already been injured. Given the totality of these circumstances, his account of a reflexive, protective reaction conforms not only to logic, but to common sense and general human experience.

More significantly -- and unlike Respondent Alvarez -- Respondent Samusev immediately stopped his vehicle after it suddenly jumped forward. This instantaneous corrective action lends credibility to Respondent Samusev's assertion that the RMP's sudden acceleration was not deliberate. The almost instantaneous slamming of the brakes, despite his very real safety concerns, was persuasive proof that his intent was not to "hurt" pedestrians with his vehicle. (Tr. 51-52, 100) In fact, Respondent Samusev chose to walk out of the RMP into a hostile crowd rather than continue to drive through the crowd and risk inflicting injury to those surrounding the RMP.⁴ (Tr. 51-52, 57-60)

⁴ Scant evidence was presented to prove that any individuals were actually injured by Respondent Samusev as a result of this incident. Although CCRB Ex. 3 recorded the scene immediately after RMP 3555 lurched, no injured persons were captured on the ground. In addition, the Police Accident Report and the Collision Report confirmed that "no injuries were reported by pedestrians." (CCRB Ex. 6 at. 1, 3, 7-8). Furthermore, the three out-of-court statements entered into evidence in which individuals claimed to have been injured were unsupported by medical records and therefore could not be accorded significant probative weight. (CCRB Exs. 4, 5, 8, 9)

In making this finding I note that evidence establishing that RMP 3555's brake lights were not on for the entirety of this incident, and a statement attributed to Respondent Samusev in the Police Accident Report, raised significant questions concerning this Respondent's account. However, the preponderance of the credible evidence, including Respondent Samusev's immediate corrective action, outweighed the probative value of these issues.

Accordingly, I find Respondent Samusev not guilty of the charged misconduct.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent Alvarez was appointed to the Department on October 18, 2017 and has no prior disciplinary history. The CCRB has recommended that he be placed on dismissal probation and forfeit 30 suspension days and 30 vacation days, the mitigated penalty for the use of deadly physical force that results in no injuries.

The unique facts of this case make it an outlier that does not fall squarely within the disciplinary category cited. Fashioning a penalty for a situation so unique in its facts requires deliberate and careful consideration of all the relevant circumstances at bar. That Respondent Alvarez confronted a crowd of protestors that aimed their hostility directly at the police is a significant mitigating factor. Moreover, this tribunal recognizes that this would have been a challenging situation for even the most seasoned officer to handle; and yet, at the time,

Respondent Alvarez had been a police officer for just over two and a half years. In addition, while his decision to exit the scene by driving through unarmed protestors was an exceedingly dangerous and irresponsible tactic, he did so at a reduced speed, which likely resulted in no injury claims being filed against him.

On the other hand, the tribunal is troubled that at trial, Respondent Alvarez appeared to remain wholly convinced that his actions as RMP operator on that day were entirely proper. His testimony evinced a misguided concept of his responsibilities and obligations as the driver of a police vehicle. This was most clearly illustrated when Respondent Alvarez was asked by his own counsel on direct examination whether he “s[aw] his car striking individuals at different times [on the video];” he replied, matter-of-factly, “I mean, I would say the individuals came in contact with my car.” (Tr. 118)

Therefore, it is the view of this tribunal that a significant forfeiture of penalty days and a period of probationary monitoring strikes the proper balance between holding Respondent Alvarez accountable for his extremely poor judgment and the difficulties he was confronted with on that day. Accordingly, it is recommended that Respondent Alvarez forfeit 40 vacation days, and that he be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one (1) year pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the force at the Police Commissioner’s discretion and may be terminated at any time without further proceedings.

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials

DISAPPROVED

NOV 21 2023

EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER DANIEL ALVAREZ
TAX REGISTRY NO. 964372
DISCIPLINARY CASE NO. 2022-25361

Respondent was appointed to the Department on October 18, 2017. On his three most recent annual performance evaluations, he was twice rated “Exceptional” for 2021 and 2022, and rated “Exceeds Expectations” for 2020. He has been awarded two medals for Meritorious Police Duty, and four medals for Excellent Police Duty.

Respondent has no disciplinary history.

For your consideration.

Rosemarie Maldonado
Deputy Commissioner Trials